IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

JENNIFER PHILLIPS and TONYA BUSH, Individually, and on behalf of all others similarly situated, Plaintiffs,	)	
vs.	)	15-cv-8954 Honorable Judge: John Z. Lee Magistrate: Sheila Finnegan
HELP AT HOME, INC., HELP AT HOME, LLC, STATEWIDE HEALTHCARE SERVICES, INC., STATEWIDE HEALTHCARE SERVICES, LLC, HAH GROUP HOLDING COMPANY, LLC, and RONALD FORD, Defendants.	)	

MEMORANDUM OF LAW IN SUPPORT OF RONALD FORD'S MOTION TO DISMISS PLAINTIFFS' COLLECTIVE AND CLASS ACTION COMPLAINT

Defendant, Ronald Ford, by his attorneys, Lewis Brisbois Bisgaard & Smith LLP, and for his Memorandum in Support of his Motion to Dismiss Plaintiffs' Collective and Class Action Complaint pursuant to Federal Rule of Civil Procedure ("FRCP") 12(b)(6), states as follows:

I. STATEMENT OF FACTS

Help at Home ("HAH") provides healthcare services to clients nationwide. Each of its multiple branches employs Supervisors responsible for overseeing and coordinating a separate class of employees, Caretakers or "Field Staff," who provide individualized home healthcare services to clients. *See* **Exhibit 1, Affidavit of Joel Davis,** at ¶¶ 4, 6, attached. Help at Home operates through a geographically diverse network of more than 142 local offices in ten states. *Id.* at ¶ 4.

Plaintiffs are HAH Supervisors, purportedly suing on behalf of all similarly situated Supervisors. Plaintiffs sued, among others, HAH Owner, President, and Chief Executive Officer ("CEO") Ronald Ford in his individual capacity, alleging that he failed to pay overtime wages and compensation in violation of three statutes: the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §

201, *et seq*.; the Illinois Minimum Wage Law ("IMWL"), 820 ILCS 105/1, *et seq.*; and the Illinois Wage Payment and Collection Act ("IWPCA"), 820 ILCS 115/1, *et seq*. *See* **[Doc. 1]**, Complaint at ¶¶ 79-91 (FLSA allegations), 92-104 (IMWL allegations), 105-117 (IWPCA allegations).

Ford is improperly before this court as a Defendant because the allegations in Plaintiffs' Complaint fail to establish his status as an employer under the statutes. In fact, the Complaint's allegations do not provide a valid basis for holding Ford liable under any Seventh Circuit precedent.

II. ARGUMENT

A. Legal Standard

This Court should grant Ford's Motion to Dismiss Plaintiffs' Collective and Class Action Complaint ("Motion") pursuant to FRCP 12(b)(6) because the Complaint does not establish Ford as an employer under any of the three at-issue statutes. Simply alleging Ford's role as owner, president, and CEO of the company is insufficient to demonstrate the type of hands-on or direct involvement with compensation decisions required to make him personally liable for violations of these laws.

As a preliminary matter, FRCP 12(b)(6) motions are decided under an *Iqbal-Twombly* standard. *See Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) (providing standards for such motions). Although all well-pleaded factual allegations in complaints are accepted as true, plaintiffs must nevertheless "state a claim to relief" that is facially plausible. *Iqbal*, 556 U.S. at 678. A plaintiff's allegations must permit the court to reasonably infer that the defendant is liable. *Id.* However, the reviewing court need not automatically accept legal conclusions that are actually disguised as factual allegations. *Id.* For purposes of the this case, Plaintiffs must adequately plead that Ford qualifies as an employer under the FLSA, the IMWL, and the IWPCA. They fail to do so.

B. Plaintiffs Have Not Alleged Facts Sufficient to Justify Qualifying Ford as an Employer Under Any of the Statutes Governing Their Case

1. Fair Labor Standards Act

In determining whether an FLSA individual defendant is an employer, the court's focus is on whether the defendant exercises sufficient control over the business or organization to impute employer status to the individual, the so-called "economic reality" test. *See Dominguez v. Quigley's Ir. Pub, Inc.*, 790 F. Supp. 2d 803, 823-24 (N. D. Ill.2011) (documenting examples of entities deemed employers under the FLSA); *see also Espenscheid v. DirectSat USA, LLC*, 2011 U.S. Dist. LEXIS 154706 at *51 (stating "[i]n determining whether a joint employer relationship exists, the key question is whether both employers *exercise control over the employee*.") (emphasis added). Under the FLSA, the economic reality test comprises factors that, if satisfied, qualify a party as an employer. *Arteaga v. Lynch*, 2013 U.S. Dist. LEXIS 138238 at **37-39 (N.D. Ill. 2013). These factors include: "whether the alleged employer (1) had the power to hire and fire employees, (2) supervised and controlled employee work schedules or conditions of payments, (3) determined the rate and method of payment, and (4) maintained employment records." *Moldenhauer v. Tazewell Pekin Consol. Communs. Ctr.*, 536 F.3d 640, 644 (7th Cir. 2008) (internal quotation marks omitted).

Iqbal demands that allegations be more than threadbare legal conclusions and that Plaintiffs allege "more than a sheer possibility that a defendant has acted unlawfully." 556 U.S. at 678. Plaintiffs only assert, without factual basis, that Ford is an employer. Even the Complaint's most detailed statement regarding Ford – that he "controlled, administered, and managed" HAH operations, [Doc. 1] at ¶ 16 – is insufficient to establish employer status under *Iqbal-Twombly*. The Complaint merely suggests Ford was aware of payment procedures in the abstract. This assertion does not provide factual detail sufficient to meet the exacting control standard elucidated in *Dominguez* – there is no allegation that Ford supervised or controlled Plaintiffs' schedules, set their compensation, or maintained their employment records. *See also Reich v. Harmelech*, 1996 U.S. Dist. LEXIS 7744 at **10-11 (N.D. Ill. 1996) (finding defendants husband and wife employers under the FLSA in large part because they were actively involved with signing and disseminating payroll information).

Other federal courts have dismissed defendants where a plaintiff's pleadings were similarly deficient. *Diaz v. Consortium for Worker Educ., Inc.*, 2010 U.S. Dist. LEXIS 107722 (S.D. N.Y. 2010), and *Tracy v. NVR, Inc.*, 667 F. Supp. 2d 244 (W. Dist. N.Y. 2009), are instructive with respect to Plaintiffs' pleading burden on the FLSA count. In *Diaz*, the court, despite "accepting all of Plaintiffs' allegations as true," determined that "[t]he complaint contains no facts that indicate that [defendant] had any direct role in managing the plaintiffs, hiring or firing the plaintiffs, determining their working hours, or maintaining employment records." Indeed, the allegations constituted merely "a global view of the [defendants] and did not "show any direct supervision." 2010 U.S. Dist. LEXIS 107722 at **9-10. Similarly, the *Tracy* court observed that "[p]laintiffs offer not supporting details to substantiate their belief other than [defendant's] job title, and allege no facts concerning the extent of [defendant's] alleged involvement in NVR's hiring and/or firing processes or record-keeping policies." 667 F. Supp. 2d at 247. Moreover, the "allegations concerning [defendant's] level of control, if any, over…work schedules, conditions of employment, and compensation, are even more attenuated." *Id.*

It is also important to recognize that those situations in which courts have denied employers' 12(b)(6) motions are largely distinguishable from this case. For instance, in *Ford v. Karpathoes, Inc.*, the court determined that plaintiffs' factual allegations were sufficient, explaining that

> it may be inferred that the [defendants] had a direct role in hiring, supervising, and firing employees of Fratelli's Italian Restaurant…that the [defendants] have significant financial interests in the restaurant, as owners…and that they exercised control over

> conditions and terms of plaintiffs' employment…[t]hus, plaintiffs have alleged facts sufficient to state a claim that the [defendants] were each "employers" within the meaning of the FLSA[.]

2014 U.S. Dist. LEXIS 162696 at *13 (D. Md. 2014) (internal citations omitted); *see also Smith v. ABC Training Ctr. of Md., Inc.*, 2013 U.S. Dist. LEXIS 108088 at **21-22 (D. Md. 2013) (stating "[t]he Individual Defendants are alleged to be managers and executives who exerted significant control over the operations…[i]t is certainly plausible that the Individual Defendants controlled plaintiffs' hours, either directly or indirectly, and that the Individual Defendants controlled the structure of the employment relationship").

This case is more akin to *Diaz* and *Tracy* than *Ford* or *Smith*. The Complaint rarely mentions Ford in any capacity whatsoever. Indeed, the allegations involving Ford are of the global variety noted in *Tracy*: mere recitations of Defendant's general roles within HAH and perfunctory, conclusory statements of his duties bolstered with virtually no "supporting details." *See* [Doc. 1] at ¶¶ 16-18.

The Complaint's allegations also differ markedly from those in *Ford*, where the court was able to infer a variety of employer-related roles based on the factual allegations. Instead, the Complaint's vague and general allegations about Ford invite only speculation regarding his role and are manifestly insufficient to establish employer status. Plaintiffs have not adequately pled a factual basis for FLSA individual liability and Ford's Motion should be granted.

2. Illinois Minimum Wage Law

Plaintiffs have similarly failed to adequately plead that Defendant is an employer under the IMWL. Preliminarily, the IMWL uses language similar to that found in the FLSA and is afforded similar treatment. Indeed, "[b]ecause the IMWL parallels the FLSA so closely, courts have generally interpreted their provisions to be coextensive, and so have generally applied the same analysis to both." *Callahan v. City of Chicago.*, 78 F. Supp. 3d 791, 821 (N.D. Ill. 2015). This necessarily entails applying the economic reality test in IMWL controversies. *Id.*

The foregoing FLSA analysis therefore applies when considering the propriety of qualifying Ford as an employer under the IMWL and is properly incorporated here. Thus, Plaintiffs have not adequately pled and Ford's Motion should be granted.

3. Illinois Wage Payment & Collection Act

Finally, Plaintiffs fail to plead facts sufficient to show that Ford is an individual employer under the third statute, the IWPCA. As a threshold matter, the IWPCA involves a different standard than the FLSA and the IMWL. Under the IWPCA, "[a]n employee can bring a private cause of action to recover the wages owed to him and can hold corporate officers and agents personally liable by proving that they *knowingly permitted* the corporation to violate the Wage Act." *Stafford v. Puro*, 63 F.3d 1436, 1440 (7th Cir. 1995) (emphasis added); *see also Krok v. Burns & Wilcox, Ltd.*, 2000 U.S. Dist. LEXIS 1451 at *18-19 (N. D. Ill. 2000) (stating that knowledge constitutes willfulness).

Here, while Plaintiffs did insert a brief paragraph alleging Defendants' knowledge of the violations, [Doc. 1] at ¶ 68, this is once again purely a legal conclusion bolstered with no plausible allegations describing precisely how Ford, an individual, knew of or promoted the supposed payment violations. Per *Iqbal*, the pleading standard "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do. Nor does a complaint suffice if it tenders naked assertion[s] devoid of further factual enhancement." 556 U.S. 678. Plaintiffs' pleadings regarding the key element of Ford's personal knowledge and endorsement of illegal payment practices are simply devoid of the "further factual enhancement" necessary to support their individual employer claim. Having failed to demonstrate that Ford knew or affirmed the alleged misdeeds, Plaintiffs again do not meet the *Iqbal-Twombly* pleading standard. Ford's Motion should be granted.

III. CONCLUSION

WHEREFORE, Defendant respectfully requests that this Honorable Court grant his Motion to Dismiss Plaintiffs' Collective and Class Action Complaint.

Respectfully submitted,

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